

Filed for intro on 02/02/95
Senate Bill _____
By _____

<PrintHouse> Bill No. House No. HB0401
By Jones

AN ACT to amend Tennessee Code Annotated, Title 47 and Title 63, relative to discriminatory pricing.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47 is amended by adding the following as a new chapter:

SECTION 47-__-101. As used in this chapter:

- (1) "Drugs" means any substance subject to section (201)(g) of the Federal Food, Drug and Cosmetic Act.
- (2) "Manufacturer" means any person who sells drugs to sellers and/or purchasers.
- (3) "Purchaser" means any person who engages in selling or dispensing drugs directly to consumers.
- (4) "Seller" means any person who sells drugs to purchasers.

SECTION 47-__-102.

- (a) Every manufacturer shall offer drugs to every seller with all rights and privileges offered or accorded by the manufacturer to the most favored

seller, including purchase prices for similar volume purchases. Every manufacturer shall offer rebates, free merchandise, samples and similar trade concessions on proportionally equal terms to every seller. Nothing in this subsection prohibits the giving of a discount for volume purchases, so long as such discount is justified by the economies or efficiencies resulting from such volume purchases and such discount is made available to all sellers on proportionally equal terms.

(b) Every manufacturer or seller shall offer drugs to every purchaser, with all rights and privileges offered or accorded by the manufacturer or seller to the most favored purchaser, including purchase prices for similar volume purchases. A manufacturer or seller shall offer rebates, free merchandise, samples and similar trade concessions on proportionally equal terms to every purchaser. Nothing in the subsection prohibits the giving of a discount for volume purchases, so long as such discount is justified by the economies or efficiencies resulting from such volume purchases and such discount is made available to all purchases on proportionally equal terms.

(c) This section shall apply to any purchase of drugs which shall be delivered to a purchaser or purchaser facility located in this state.

SECTION 47-__-103. No entity of the state government shall purchase any drugs from a manufacturer or seller that engages in any price discrimination prohibited by this chapter.

SECTION 47-__-104. Any purchaser damaged by violation of this chapter may bring an action against the seller to recover treble damages sustained by reason of such violation. Proof of price discrimination shall constitute prima facie evidence of damage to a disfavored purchaser.

SECTION 47-__-105. Any person who violates this chapter or any rule promulgated under this chapter or any order or injunction to cease and desist from such violations shall be required to pay a civil penalty of not less than one thousand dollars (\$1,000) nor more than one hundred thousand dollars (\$100,000) per violation. The attorney general may commence any action to enforce this chapter.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

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